

These are the minutes of the special meeting of the Texas Transportation Commission, which met on May 15, 2007, in Austin, Texas. The meeting opened at 2:12 p.m. with the following members present:

**Texas Transportation Commission**

Ric Williamson

Chair

Ted Houghton, Jr.

Commissioner

Fred Underwood

Commissioner

**Administrative Staff**

Michael W. Behrens, Executive Director

Steve Simmons, Deputy Executive Director

Bob Jackson, General Counsel

Roger Polson, Executive Assistant to the Deputy Executive Director

Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Clerk.

A public notice of this meeting was filed in the office of the Secretary of State at 11:23 a.m. on May 14, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Records Act."

The commission met and received information from staff regarding the following agenda item:

Consider amending, approving a waiver of certain requirements in, or dissolving the regional protocol with the North Texas Tollway Authority for the development, construction, operation and implementation of current and future toll projects in the Dallas/Fort Worth region previously approved by Minute Order 110653

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

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Transportation Code, §366.002 provides that one of the purposes of the creation of regional tollway authorities, such as the North Texas Tollway Authority (NTTA), is to reduce the burdens and demands on the limited money available to the Texas Transportation Commission (commission) and to increase the commission's effectiveness and efficiency.

Consistent with that purpose, various provisions of the Transportation Code authorize the Texas Department of Transportation (department) to enter into contracts with a regional tollway authority relating to the (1) improvement by the authority of segments of the state highway system, (2) authority's design, development, financing, construction, maintenance, repair or operation of department toll projects, (3) department's contribution to the costs of authority turnpike projects, and (4) joint study of the feasibility of turnpike projects or their acquisition, design, financing, construction, maintenance, repair, operation, extension or expansion.

In Minute Order 110653, dated August 24, 2006, the commission approved a TxDOT/NTTA Regional Protocol (protocol) for the purpose of implementing a procedure to allocate and speed delivery of transportation projects identified in the regional transportation plan of the North Central Texas Council of Governments (NCTCOG), and authorized and directed the department to implement the provisions of the protocol, including the negotiation and execution of project development, revenue sharing, and other agreements contemplated under the protocol.

The protocol (1) permits the department to proceed with comprehensive development agreement (CDA) procurements for various projects in the region and confirms that the NTTA would not submit a public sector alternative for those projects, (2) confirms the delivery of various projects in the region as NTTA projects, subject to regional toll revenue sharing, (3) commits the department and the NTTA, working with the Regional Transportation Council (RTC), to implement a procedure to determine appropriate financial plans, regional revenue sharing, and delivery methods for transportation projects in the region for recommendation to the commission, (4) commits the department and the NTTA to implement a procedure for allocating responsibility for conducting feasibility analyses for candidate toll roads in the NCTCOG regional plan, and to make joint recommendations on project delivery and timing to the RTC and the commission, and (5) provides that the NTTA will provide toll collection services, defined as back office, clearinghouse and customer services, for CDA projects for the first five years of revenue service.

The protocol allows the department to proceed with its CDA procurements for SH 121 in Collin and Denton counties, SH 161 in Dallas County, I-635/I-35E in Dallas County, SH 121/SH 114/I-635 in Tarrant, Dallas and Denton counties, and SH 183/I-820/I-35W in Tarrant County. The protocol allows the NTTA to proceed with project delivery for the Eastern Extension of the President George Bush Turnpike in Dallas County (SH 190), the Lewisville Lake Bridge in Denton County, and Southwest Parkway (SH 121) in Tarrant County.

On March 26, 2007, the chair of the RTC, the transportation policy body for NCTCOG and the metropolitan planning organization for the region, sent a letter to the chairmen of the commission and the NTTA Board, that in part asks the NTTA Board to determine if it wishes to submit a binding commitment for the SH 121 project in Collin and Denton counties to the RTC. If the NTTA wishes to submit a binding commitment,

the letter provides the submission will be due to the RTC no later than 5 p.m. on May 25, 2007.

On April 11, 2007, the NTTA Board directed the staff of the NTTA to prepare a proposal for the NTTA's construction and operation of SH 121 in Collin and Denton counties, with the understanding that the proposal will not be delivered or released to any party unless and until the NTTA Board subsequently reviews, approves and authorizes its delivery.

On May 7, 2007, the NTTA Board approved the NTTA's submission to the RTC of a public sector proposal to finance, design, construct, operate, and maintain the SH 121 toll project. On May 14, 2007, the chair of the RTC sent a letter to the chair of the commission, requesting action to waive any provisions in the protocol prohibiting the NTTA from submitting a proposal on SH 121.

The submission of a binding commitment for the construction and operation of SH 121 to the RTC would be inconsistent with provisions in the protocol under which the NTTA committed to support the CDA delivery by the department of SH 121, and agreed that the NTTA would not be making a proposal as a public sector comparator for that project.

The submission of a binding commitment by the NTTA would be consistent with the commission's strategy to increase competitive pressure to drive down the cost of transportation projects, and would provide assurances that the region has received the proposal for SH 121 that provides the best value for the region.

IT IS THEREFORE ORDERED by the commission that any inconsistent requirements in the protocol are waived for the limited purpose of allowing the NTTA to submit a binding commitment for the construction and operation of SH 121 in Collin and Denton counties to the RTC.

IT IS FURTHER ORDERED that the executive director of the department is authorized and directed to send a letter to the NTTA that provides, for the same purpose as described in the immediately preceding paragraph, a corresponding waiver of any inconsistent requirements in any agreements entered into by the department and the NTTA to implement the requirements of the protocol.

IT IS FURTHER ORDERED that the department is authorized and directed to provide any necessary assistance to the RTC in its review of the binding commitment.

This special meeting of the Texas Transportation Commission adjourned at 2:30 p.m.

APPROVED:

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Ric Williamson, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its special meeting on May 15, 2007, in Austin, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation